
UTAH LABOR COMMISSION

MIKE B. OSEGUERA,

Petitioner,

vs.

**FIDELITY GUARANTY & TRUST and
SEDGWICK CLAIMS MANAGEMENT
SERVICES, INC.,**

Respondents.

**ORDER REVERSING ALJ'S
DECISION AND
AWARDING BENEFITS**

Case No. 02-0827

Mike B. Oseguera asks the Utah Labor Commission to review Administrative Law Judge La Jeunesse's denial of Mr. Oseguera's claim for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated §63-46b-12 and §34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Mr. Oseguera's initial application alleged that cumulative trauma from driving truck for Consolidated Freightways,¹ coupled with a work accident on February 18, 2002, had injured his left hip. Judge La Jeunesse held an evidentiary hearing on Mr. Oseguera's claim and then referred the claim to a medical panel. Upon receipt of the panel's report and subsequent intermediary proceedings, including the Commission's Order of Remand and a supplemental report from the medical panel, Judge La Jeunesse issued his order of July 7, 2005, in which he concluded that neither cumulative trauma nor the accident of February 18, 2002, caused Mr. Jensen's left hip problems. Judge La Jeunesse therefore denied Mr. Oseguera's claim.

In challenging Judge La Jeunesse's decision, Mr. Oseguera concedes that his day-to-day work at Consolidated did not cause his left hip osteoarthritis. However, Mr. Oseguera maintains that his work accident on February 18, 2002, caused his left osteoarthritis to become symptomatic, thereby necessitating hip replacement surgery.

¹ Although Consolidated was Mr. Oseguera's employer during the period of time that is material to this workers' compensation claim, Consolidated has since filed for bankruptcy. For that reason, the company is not named as a respondent in this proceeding. Mr. Oseguera's claim has proceeded against Fidelity Guaranty & Trust, as Consolidated's workers' compensation insurance carrier.

FINDINGS OF FACT

The Commission finds the following facts to be material to the issue presented by Mr. Oseguera's motion for review.

Mr. Oseguera worked for Consolidated for 27 years, driving a delivery truck for the last 20 of those years. During this period of time, Mr. Oseguera developed severe osteoarthritis in his left hip. However, this condition was asymptomatic and did not limit Mr. Oseguera's ability to perform his work duties or engage in non-work activities.

On February 18, 2002, while unloading one of Consolidated's trucks, Mr. Oseguera was pulling a loaded pallet jack weighing approximately 600 pounds. One of the jack's wheels became stuck on a wood chip, bringing the jack to a sudden stop and wrenching Mr. Oseguera's hip and low back.

Mr. Oseguera received medical attention shortly after his injury for pain in his low back and left hip. Initially, his physicians believed Mr. Oseguera's left hip complaints were caused by his low back injury. Later, his physicians diagnosed left hip osteoarthritis and Mr. Oseguera underwent hip replacement surgery. As discussed below, the Commission finds that Mr. Oseguera's work accident on February 18, 2002, medically caused his need for hip replacement surgery.

DISCUSSION AND CONCLUSION OF LAW

Section 34A-2-401 of the Utah Workers' Compensation Act requires employers and their insurance carriers to pay benefits to workers injured by accident "arising out of and in the course of" employment. To establish that an injury "arises out of" employment, the injured worker must establish that his or her work was both the legal cause and the medical cause of the injury in question. *Allen v. Industrial Commission*, 729 P.2d 15, 25 (Utah 1986). It is the question of medical causation that is at issue in this case.

As the Utah Supreme Court observed in *Allen*, *Ibid.*, "Just because a person suffers a preexisting condition, he or she is not disqualified from obtaining compensation. Our cases make clear that 'the aggravation or lighting up of a pre-existing disease by an industrial accident is compensable (Citation omitted.)'" Similarly, §34A-2-105(1) of the Utah Workers' Compensation Act provides that the Act is ". . . the exclusive remedy [for] **any accident . . . in any way** contracted, sustained, **aggravated**, or incurred by the employee in the course of . . . the employee's employment" (Emphasis added.) This rule that the work-related aggravation of a preexisting condition is compensable is summarized in *Larson's Workers' Compensation Law*, §9.02[1], as follows:

Preexisting disease or infirmity of the employee does not disqualify a claim under the “arising out of employment” requirement if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the . . . disability for which compensation is sought. This is sometimes expressed by saying that the employer takes the employee as it finds the employee.

In Mr. Oseguera’s case, the evidence establishes that his underlying arthritic condition was asymptomatic until the accident at Consolidated on February 18, 2002. Hip replacement surgery was then necessary to treat the now-symptomatic osteoarthritis. The issue before the Commission is whether the relationship between Mr. Oseguera’s work accident and his subsequent need for surgery is sufficient to satisfy the workers’ compensation system’s requirement of medical causation.

Obviously, any finding of medical causation depends on the medical evidence. In the words of Professor Larson, “. . . most of the problems in this area are medical rather than legal. Indeed, it is medical controversy that chiefly accounts for the large number of cases in this category.” *Larson’s Workers’ Compensation Law* at §0.02(4). In considering whether Mr. Oseguera has met the requirement of medical causation in this case, the Commission has considered the entire medical record and particularly the opinions of Dr. Fotheringham, Dr. Horne and the report of Dr. Holmes, who served as the Commission’s medical panel.

Dr. Fotheringham, who examined Mr. Oseguera on behalf of Consolidated and its insurance carrier, noted that Mr. Oseguera had no problems with his left hip until after the work accident on February 18, 2002. Dr. Fotheringham then concluded, without discussion, that Mr. Oseguera’s need for hip replacement surgery was not related to the accident.

Dr. Horne, Mr. Oseguera’s treating physician, reached the opposite conclusion. Dr. Horne explained his opinion as follows:

[Mr. Oseguera] had not had any symptoms in the hip prior to this injury. He had not been seeing any doctors for his hip, getting x-rays, or losing time from work from his hip. He did not know that he had arthritic changes in the hip, and that’s also a relatively common finding even people with real severe hip arthritis, and even older people who come in, something happens, and all of a sudden they have severe hip pain. . . . He could obviously have twinkled and stressed the hip area

Serving as the Commission’s medical panel, Dr. Holme observed it was “conceivable, although unlikely, that the injury of 2/18/02 . . . could have caused aggravation or even minor acceleration of his left hip [degenerative joint disease].” Dr. Holmes supports his opinion with a statement that “[Mr. Oseguera] presented initially with back problems and his treatment . . . only later shifted to evaluation of the longstanding left hip [osteoarthritis].” However, contrary to Dr. Holmes’ statement, Mr. Oseguera experienced **both** back and left hip pain after his work accident.

None of the foregoing medical opinions are conclusive.² Dr. Fotheringham’s opinion does

² The Commission had anticipated that, on remand, the medical panel would consult with other medical experts and then amplify its opinion regarding Mr. Oseguera’s condition. Unfortunately,

not sufficiently explain its conclusions. Dr. Holmes' opinion appears to be based, at least in part, on a misperception of the history of Mr. Oseguera's left hip problems. The Commission therefore finds Dr. Horne's opinion to be persuasive. Specifically, Dr. Horne's opinion is consistent with Mr. Oseguera's objective medical condition both before and after the work accident on February 18, 2002. It is supported by Dr. Horne's experience as a medical practitioner, his personal knowledge of the Mr. Oseguera's medical treatment, and Mr. Oseguera's response to that treatment.

In summary, the Commission concludes that Mr. Oseguera's symptomatic left hip osteoarthritis arose out of his employment at Consolidated and that hip replacement surgery was necessary to treat that condition. As Consolidated's workers' compensation insurance carrier, Fidelity Guaranty & Trust is liable for the reasonable cost of such surgery, together with Mr. Oseguera's attorney's fees incurred in pursuing this claim, as allowed by § 34A-1-309(4) of the Utah Workers' Compensation Act.

ORDER

Pursuant to §34A-2-418 of the Utah Workers' Compensation Act and the Commission's medical and surgical fee schedule, Fidelity Guaranty & Trust shall pay reasonable expenses of medical care necessary to treat the work-related aggravation of Mr. Oseguera's left hip osteoarthritis, including left hip replacement surgery. Fidelity Guaranty & Trust shall also pay Mr. Oseguera's travel expense, if any, in accord with the Utah Administrative Code R612-2-20 and shall pay interest on any unpaid medical expenses as provided by Utah Administrative Code R612-2-13.

Pursuant to §34A-1-209(4) of the Utah Workers' Compensation Act, Fidelity Guaranty & Trust shall pay Phillip Shell, Mr. Oseguera's attorney, an attorney's fee in accordance with Utah Administrative Code Rule R602-2-4. This amount shall be in addition to the payment of medical expenses, travel expenses and interest, and shall be paid directly to Mr. Shell.

It is so ordered.

Dated this 15th day of March, 2007.

Sherrie Hayashi
Utah Labor Commissioner

that did not happen.